Supreme Court, U.S.
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NO.

IN THE

SUPREME COURT OF THE UNITED STATES

ALEJANDRO EMILIO GARCIA-GONZALEZ,
YOSETTI MARAINA RODRIGUEZ-ARICHIKA,
MARIA ALEJANDRE GARCIA-RODRIGUEZ

Petitioners

v.

U. S. ATTORNEY GENERAL

Respondent

On Petition for Writ of Certiorari
To the United States Court of Appeal for the Eleventh Circuit

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PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the United States Court of Appeal for the Eleventh Circuit erred in denying withholding of removal under the statute and the Convention Against Torture to Petitioners where Lead Petitioner and his Parents were persecuted based upon their political opinion by the Chavez supporters.

CORPORATE DISCLOSURE STATEMENT

No parties are corporations. Sup. Ct. R. 29.6

TABLE OF CONTENTS

Question Presented for Review.....i

Corporate Disclosure Statement.....ii

Table of Contents.....ii

Table of Authorities.....iii

Petition for a Writ of Certiorari.....1

Opinions Below.....1

Jurisdiction.....1

Constitutional Provision and Statutes Involved.....1

Statement of the Case.....1

Reasons for Granting the Writ.....2

I. The Decision below conflicts with the regulations and case law 2

Conclusion.....10

Appendix.....1a

TABLE OF AUTHORITIES

CASES

Adriano v. INS, 1999 U.S. App. LEXIS 827, 835 (9th Cir. Jan. 20, 1999).....7, 8

Ahmed v. Ashcroft, 94 Fed. Appx. 361 (7th Cir. 2004)....7

Borja v. INS, 175 F. 3d 732 (9th Cir. 1999).....8

Cao v. Gonzales, No. 05-1542, WL 751366, slip op. at 3 (7th Cir. Mar. 23, 2006).....4

Chand v. INS, 222 F. 3d 1066, 1074 (9th Cir. 2000).....4

Cordon-Garcia v. INS, 204 F. 3d 985, 990 (9th Cir, 2000).....4

Curumi v. Ashscroft, 119 Fed. Appx. 468 (4th Cir. 2005)..7

Duarte de Guinac, 179 F.3d 1156, 1159 (9th Cir. 1999).....3

Girma v. I.N.S., 283 F.3d 664, 667 (5th Cir. 2002).....8

Gonzalez v. INS, 82 F.3d 903, 907 (9th Cir. 1996).....7

Kataria v. INS, 232 F.3d 1107, 1119 (9th Cir. 2000).....3, 4

Kouzlin v. INS, 218 F. 3d 1112, 1117 (9th Cir. 2000).....8

Lim v. INS, 224 F.3d 929, 935 (9th Cir. 2000).....7

Nagoulko v. INS, 333 F.3d 1012 (9th Cir.2003).....6

Navas v. INS, 217 F.3d 646, 655 (9th Cir. 2000).....3

Osorio v. INS, 18 F.3d 1017, 1028 (2d Cir. 1994).....8

Pineiro v. Ashcroft, 119 Fed. Appx. 84 (9th Cir. 2004)...5, 6

Reyes-Guerrero v. INS, 192 F.3d 1241, 1243-44 (9th Cir, 1999).....8

Singh v. INS, 134 F.3d 962, 967 (9th Cir. 1998).....4

Surita v. INS, 95 F.3d 814, 817-18 (9th Cir.1996).....5

Timbuleng v. Attorney General of U.S., No. 05-2348, WL 887346, slip op. at 3, 2006 (3d Cir. Mar. 7, 2006).....4

Zayas-Marini v. Immigration and Naturalization Service, 785 F.2d 801 (9th Cir. 1986).....7

Zheng v. Ashcroft, 332 F.3d 1186, 1995 (9th Cir. 2003)...9

STATUTES

Section 208(a) of the Immigration and Nationality Act.....1, App. 1a
Section 237(a)(1)(B) of the Immigration and Nationality Act.....1, App. 2a
Section 241(b)(3) of the Immigration and Nationality Act.....1, App. 2a
8 C.F.R. § 208.16(c)(2).....1, App. 4a

PETITION FOR A WRIT OF CERTIORARI

The Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeal for the Eleventh Circuit.

OPINIONS BELOW

The opinion of the Court of Appeal (App. 5a) is not reported. The Opinion of the Board of Immigration Appeals (App. 11a) is not reported. The Opinion of the Immigration Judge (App. 14a) is not reported.

JURISDICTION

The judgment of the United States Court of Appeals for the Eleventh Circuit was issued on March 30, 2006. This Court has jurisdiction over this petition under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

Section 208(a) of the Immigration and Nationality Act: (App. 1a)
Section 237(a)(1)(B) of the Immigration and Nationality Act: (App. 2a)
Section 241(b)(3) of the Immigration and Nationality Act: (App. 2a)
8 C.F.R. 208.16(c)(2) (App. 4a)

STATEMENT OF THE CASE

Lead Petitioner last came to the United States on April 15, 1996. He completed his application for political asylum in 2002 and presented it to the then-INS. The

application included his wife and daughter. The application was denied by the INS and Lead Petitioner and his family were referred to Immigration Court. At the Individual Hearing held on June 14, 2004, the Immigration Judge denied Petitioners' applications for political asylum and withholding of removal under the statute and the United Nations Convention Against Torture.

Petitioners then appealed the Immigration Judge's decision to the BIA. On August 3, 2005, the BIA affirmed the Immigration Judge's decision, without opinion. Petitioners then timely filed their petition for review of the BIA's decision. On March 30, 2006, the Court denied their Petition for Review.

REASONS FOR GRANTING THE WRIT

The Decision below conflicts with the regulations and case law

Political Asylum

The Petitioners do not challenge the Court of Appeals' denial of their untimely-filed political asylum application due to lack of jurisdiction.

Withholding of Removal Under the Statute

The Petitioners here argue that they should be granted withholding of removal because of the past persecution that the Lead Petitioner has suffered, the persecution that his father and mother suffered, and the well-founded fear of future persecution that the family has. The Lead Petitioner suffered injuries from the Chavez national

guard on account of his and his parents' political opinion and he was threatened for those same reasons. Those threats rise to the level of persecution. A clear probability exists that the Petitioners will face further persecution were they to be returned to Venezuela.

An alien is entitled to withholding of removal "if the evidence demonstrates a clear probability that the applicant would be persecuted were he to be deported to his home country." Kataria, 232 F.3d 1107, 1120 (9th Cir. 2000), citing Duarte de Guinac, 179 F.3d 1156, 1159 (9th Cir. 1999). "In order to demonstrate a clear probability of persecution, a petitioner must prove that "it is more likely than not that he would be persecuted on account of a statutorily-protected ground." Kataria, 232 F.3d at 1120, Citing Navas v. INS, 217 F.3d 646, 655 (9th Cir. 2000). An alien seeking withholding of removal to any country must show that his life or freedom would be threatened in that country on account of one of the enumerated grounds. Kataria, 232 F.3d at 1120.

The Court of Appeal stated that Lead Petitioner had failed to demonstrate it was more likely than not that he would face persecution if returned to Venezuela and that he could safely relocate within Venezuela.

Specifically, the Court stated:

> Garcia-Gonzalez testified that in February 1992, during Hugo Chavez's attempted coup, he was stopped on the way to work at the airport by a group of six or seven men. They asked him about his work, his membership in the Democratic Action party, and political comments his parents had made. They threw his wallet on the ground, and when he went to pick it

> up, he was hit on the elbow and hand with a stick. When he asked the men why they had attacked him, they made fun of his political affiliation and his job, which he had gotten through his parents' political connections. He said he received threatening phone calls for the next few weeks, and again after a second failed coup in November 1992. The phone calls and threats do not rise to the level of persecution. Sepulveda, 401 F.3d at 1231 (App. 9a).

However, case law supports Petitioners' contention that those phone calls *do* rise to the level of persecution, separate and apart from the injuries that Lead Petitioner sustained. In Timbuleng v. Attorney General of U.S., No. 05-2348, WL 887346, slip op. at 3, 2006 (3d Cir. Mar. 7, 2006), persecution is defined as "threats to life, confinement, torture, and economic restrictions so severe that they constitute a threat to life or freedom." Citing Fatin v. INS, 12 F.3d 1233, 1240 (3d Cir.1993). See also, Toure v. Attorney General of U.S., --- F.3d ----, 2006 WL 861187 (3d Cir. 2006).

In Cao v. Gonzales, No. 05-1542, WL 751366, slip op. at 3 (7th Cir. Mar. 23, 2006), the Court stated "While threats "of a most immediate and menacing nature" may be enough to prove persecution, unfulfilled threats generally do not."

As well, in Kataria v. INS, 232 F.3d at 1119, citing Cordon-Garcia v. INS, 204 F. 3d 985, 991 (9th Cir, 2000) (quoting Singh v. INS, 134 F.3d 962, 967 (9th Cir. 1998), persecution is defined as "the infliction of suffering or harm upon those who differ (in race, religion, or political opinion) in a way regarded as offensive."

In Chand v. INS, 222 F. 3d 1066, 1074 (9th Cir. 2000), the Court stated:

> Chand was also robbed repeatedly, and testified that the police were not interested in dealing with this continuing problem. In addition, Chand's house was attacked by Fijian soldiers when his wife was at home alone, resulting in the destruction of his property (and great terror for his wife). We have treated persistent robbery under threatening conditions as persecution in another case involving an Indian Fijian asylum applicant, where there was evidence that the Fijian government was unable or unwilling to control such crime. See Surita v. INS, 95 F.3d 814, 817-18 (9th Cir.1996). Such evidence exists here as well.

In Reyes-Guerrero v. I.N.S., 92 F.3d 1241, 1245 (9th Cir, 1999), the Court stated :

> The BIA erred when it reduced the actions against Carlos Reyes to nothing more than attempts by criminal defendants to disrupt the criminal process. The BIA's mistake was to focus on one motive of the persecutors-which was to disrupt the investigation of the White Collar Scandal-while ignoring substantial evidence in the record that the persecutors saw Carlos as their political enemy. The criminal justice and political systems in Colombia are closely intertwined.

Lead Petitioner's circumstances are different from those in the case of Pineiro v. Ashcroft, 119 Fed. Appx. 84 (9th Cir. 2004) where Argentines, Jose Manuel Pineiro and his wife, Patricia Silvia Lico, applied for political asylum based on persecution on account of their political opinion.

In that case, the Court stated:

The record does not compel the conclusion that Pineiro established past persecution or a well-founded fear of future persecution on account of political opinion. Pineiro testified that on three occasions in the 1970's he was detained by military police, and on one of these occasions he was beaten because he was participating in a student demonstration against his high school. But Pineiro did not leave Argentina until 1990 and did not present any evidence of persecution in the intervening years. These "isolated incident[s], therefore, cannot alone support a contention of persecution. Similarly, the record does not compel the conclusion that Lico established past persecution or a well-founded fear of future persecution on account of her political opinion because she did not present any evidence that she was personally harmed or threatened. Citing Nagoulko v. INS, 333 F.3d 1012, 1016 (9th Cir.2003). Pineiro v. Ashcroft, 119 Fed. Appx at 85.

The Court of Appeals in the case at Bar also stated:

The record does not establish a future threat to Garcia-Gonzalez's life or freedom on a protected ground. In advancing his future threat claim, Garcia-Gonzalez relies — in addition to the February 1992 incident — on the fact that his father was detained and beaten in 2002 and has been attacked and threatened multiple times since then. This is the only evidence of threats he cites over the ten plus years since 1992. Garcia-Gonzalez fears that he will be

attacked due to his father's political activities.[1] His father, however, still lives in Venezuela, despite the fact that he has a valid passport and visa to the United States. (App. 10a)

However, Lead Petitioner has offered reasonable explanations for his actions. He had not intended to stay in the U.S. when he came in 1996. However, because of changed country conditions, for the worse, in Venezuela, he could not return home. His mother and father had been politically active against the Chavez government and had their own political radio program. His father was a College Professor and Journalist. His parents were attacked more than once. In 2002, his father was detained, beaten and threatened with death in Venezuela. As the Petitioners stated in their Brief below, the U.S. Department of State's Country Reports on Human Rights for Venezuela claimed that "Other media owners and executives sent their families abroad fearing they could be attacked or kidnapped if they were to remain in the country." (Pet. Br. at p. 30). In 2003, Lead Petitioner was diagnosed by a Psychologist with Post Traumatic Stress Disorder that he had been suffering since 1996.

In Ahmed v. Ashcroft, 94 Fed. Appx. 361 (7th Cir. 2004), Lim v. INS, 224 F.3d 929, 935 (9th Cir. 2000), Adriano v. INS, 1999 U.S. App. LEXIS 827, 835 (9th Cir. Jan. 20, 1999), Reyes-Guerrero v. INS, 192 F.3d 1241, 1243-44 (9th Cir, 1999) and Gonzalez v. INS, 82 F.3d 903, 907 (9th Cir. 1996), the Petitioners had all remained in their country for many years after they were threatened. And in Zayas-Marini v. Immigration and Naturalization Service, 785 F.2d 801 (9th Cir. 1986), Marini's return to his country more than

[1] His mother is deceased.

once after fleeing in fear was not held against him. Similarly, in Curumi v. Ashscroft, 119 Fed. Appx. 468 (4th Cir. 2005), where the BIA's denial of Curumi's asylum application was vacated and remanded, Curimi went to Italy in 1993 and spent a year working there. When his employment contract ended, he returned to Albania and opened another business.

Furthermore, the Court of Appeal in this case stated:

> The claim of past persecution rests heavily on the February 1992 attack described above. It is unclear from his testimony that these men attacked him due to his or his family's political opinion as opposed to his job. Even if this attack was based on his political opinion, it appears to have been an isolated incident considering that he remained in Venezuela until 1996 and suffered no further attacks. (App. 9a)

In Girma v. I.N.S., 283 F.3d 664, 667 (5th Cir. 2002) the Court stated that "an applicant need not show past persecution or fear of future persecution 'solely on account of' a protected ground. Citing Borja v. INS, 175 F. 3d 732, 735 (9th Cir. 1999) (quoting Osorio v. INS, 18 F.3d 1017, 1028 (2d Cir. 1994). Stated another way, 'the presence of possible mixed motives need not [necessarily] defeat claim." Citing Kouzlin v. INS, 218 F. 3d 1112, 1117 (9th Cir. 2000) (discussing the holding in Borja, 175 F. 3d 732)."

Adriano and Reyes-Guerrero, discussed supra, were granted withholding of removal. Like the Appellants in Adriano and Reyes-Guerrero, the Lead Petitioner and his family here warrant a grant of withholding of removal because Lead Petitioner and his parents suffered past persecution and there exists a clear probability that he and

his family will suffer future persecution were they to be returned to Venezuela. The fact that Lead Petitioner was attacked because of his political opinion and his job—i.e., for mixed motives—does not defeat his claim for withholding of removal.

Withholding of Removal Under the Convention Against Torture

Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prohibits it signatory states from removing "a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture." The United States is a signatory to the Convention and therefore, pursuant to 8 C.F.R. Sec. 208.16(c)(2), an applicant for relief under the Convention against Torture may not be removed to the stated country if the applicant can establish that it is more likely than not that he would be tortured if he were to be removed to that country.

The Court of Appeal stated:

> There is simply no evidence that, on his return to Venezuela, Garcia-Gonzalez would likely be subjected to violence "at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." Citing 8 C.F.R. § 208.1 8(a)(l). (App. 10a).

However, the Venezuelan Government has turned a blind eye to the activities of the Chavez supporters who persecuted Lead Petitioner and that rises to the level of

acquiescence, as discussed in Zheng v. Ashcroft, 332 F.3d 1186, 1995 (9th Cir. 2003).

As stated in Petitioners' Brief in their 11th Circuit appeal case, the Country Report on Human Rights on Venezuela from the U.S. State Department states specifically that PROVEA (the Venezuelan Program of Action and Education in Human Rights), a Human Rights NGO, reported that between October 2003 and September, it received 58 complaints of torture and 491 regarding cruel, inhuman, and degrading treatment. From January to June, Red de Apoyo received 30 complaints from alleged torture victims.

The Report goes on to say that the Government did not ensure independent investigation of complaints of torture. COFAVIC questioned the Attorney General's ability to oversee neutral investigations, because he was an active member of the President's political party and a former vice president in the current Government. Human rights groups also asserted that the Institute of Forensic Medicine, part of the CICPC, was unlikely to be impartial in the examinations of cases that involved torture by CICPC members. Few cases of torture resulted in convictions. (Pet. Br. at 36).

CONCLUSION

The United States Court of Appeal for the Eleventh Circuit erred in denying withholding of removal under the statute and the Convention Against Torture to Petitioners where Lead Petitioner and his Parents were persecuted based upon their political opinion by the Chavez supporters. Therefore, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

Section 208(a) of the Immigration and Nationality Act:

Authority to Apply for Asylum.-

(1) In general. - Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 235(b).

(2) Exceptions. -

(A) Safe third country. - Paragraph (1) shall not apply to an alien if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States.

(B) Time limit. - Subject to subparagraph (D), paragraph (1) shall not apply to an alien unless the alien demonstrates by clear and convincing evidence that the application has been filed within 1 year after the date of alien's arrival in the United States.

(C) Previous asylum applications. - Subject to subparagraph (D), paragraph (1) shall not apply to an alien if the alien has previously applied for asylum and had such application denied.

(D) Changed conditions. - An application for asylum of an alien may be considered, notwithstanding subparagraphs (B) and (C), if the alien demonstrates to the satisfaction of the Attorney General either the existence of changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing the application within the period specified in subparagraph (B).

(3) Limitation on judicial review. No court shall have jurisdiction to review any determination of the Attorney General under paragraph (2).

Section 237 of the Immigration and Nationality Act:

(a) Classes of Deportable Aliens.-Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:

(1) Inadmissible at time of entry or of adjustment of status or violates status.-

(B) Present in violation of law.-Any alien who is present in the United States in violation of this Act or any other law of the United States is deportable.

Section 241(b)(3) of the Immigration and Nationality Act:

(b) Countries to Which Aliens May Be Removed.-

(3) Restriction on removal to a country where alien's life or freedom would

be threatened.-

(A) In general.-Notwithstanding paragraphs (1) and (2), the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.

(B) Exception.-Subparagraph (A) does not apply to an alien deportable under section 237(a)(4)(D) or if the Attorney General decides that-

(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of an individual because of the individual's race, religion, nationality, membership in a particular social group, or political opinion;

(ii) the alien, having been convicted by a final judgment of a particularly serious crime, is a danger to the community of the United States;

(iii) there are serious reasons to believe that the alien committed a serious nonpolitical crime outside the United States before the alien arrived in the United States; or

(iv) there are reasonable grounds to believe that the alien is a danger to the security of the United States.

For purposes of clause (ii), an alien who has been convicted

of an aggravated felony (or felonies) for which the alien has been sentenced to an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime. The previous sentence shall not preclude the Attorney General from determining that, notwithstanding the length of sentence imposed, an

alien has been convicted of a particularly serious crime. For purposes of clause (iv), an alien who is described in section 237(a)(4)(B) shall be considered to be an alien with respect to whom there are reasonable grounds for regarding as a danger to the security of the United States.

8 C.F.R. Section 208.16(c)(2):

(c) Eligibility for withholding of removal under the Convention Against Torture.

(2) The burden of proof is on the applicant for withholding of removal under this paragraph to establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal. The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration.

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
MARCH 30, 2006
THOMAS K. KAHN
CLERK

No. 05-14855
Non-Argument Calendar

BIA Nos. A96-282-224 & A96-282-225

ALEJANDRO EMILIO GARCIA-GONZALEZ, YOSETTI MARIANA RODRIGUEZ-ARICHIKA, MARIA ALEJANDRE GARCIA-RODRIGUEZ,

Petitioners,

versus

U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals

(March 30, 2006)

Before TJOFLAT, BLACK and BARKETT, Circuit Judges.

PER CURIAM:

Petitioners are natives and citizens of Venezuela. An Immigration Judge ("IJ") denied their applications for asylum, withholding of removal under the Immigration and Nationality Act ("INA") § 241(b)(3)(A), 8 U.S.C. 1231(b)(3), and relief under the United Nations Convention Against Torture ("CAT'), 8 C.F.R. § 208.16(c), and ordered their removal. The Board of the Immigration Appeals ("BIA"), adopting the IJ's decision, affirmed. They now petition this court for review.1 Their petition presents these issues: whether we lack jurisdiction to review the application for asylum because it was untimely, and whether substantial evidence supports the IJ's finding that Garcia-Gonzalez failed to demonstrate eligibility for withholding of removal under the INA or relief under CAT. We address these issues in turn.

I.

Garcia-Gonzalez last entered the United States in 1996. He filed his application for asylum six years later, in 2002. The application was untimely; an alien must file an asylum application within one year of his arrival in the United States. INA § 208(a)(2)(B), 8 U.S.C. § 1158(a)(2)(E), Nonetheless, "[a]n application for asylum of an alien may be considered...if the alien demonstrates to the satisfaction of the Attorney General either the existence of changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing an application...." INA § 208(a)(2)(0), 8 U.S.C. § 1 158(a)(2)(D).

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1 Petitioners are, respectively, a husband, Garcia-Gonzalez, wife and daughter. Because Garcia-Gonzalez is the lead petitioner and his wife and daughter are derivative applicants, for convenience we refer only to Garcia-Gonzalez in this opinion.

The obstacle Garcia-Gonzalez faces is that INA § 208(a)(3), 8 U.S.C. § I 158(a)(3), divests this court of jurisdiction to review an administrative decision, such as the one at issue here, that the alien failed to comply with the one-year time limit or establish changed or extraordinary circumstances that would excuse his untimely filing. Mendoza v. U.S. Att'y General, 327 F.3d 1283, 1287(11th dr. 2003); Fahim v. U.S. Att'y. Gen., 278 F.3d 1216, 1217(11th dr. 2002). We therefore resolve the first issue against Petitioners and turn to the remaining issues.

II.

Because the BIA, in affirming, expressly adopted the IJ's decision withholding removal and denying CAT relief we review that decision. See Al Najjar v. Ashcroft, 257 P.3d 1262, 1284 (11th Cir. 2001). To the extent that the decision was based on a legal determination, we review it de novo. D-Muhumed v. U.S. Att'y Gen., 388 F.3d 814,817(11th Cir. 2004). The IJ's factual determinations are reviewed under the substantial evidence test. We reject a factual finding "only when the record compels reversal; the mere fact that the record may support a contrary conclusion is not enough...." Adefemi v. Ashcroft 386 F.3d 1022, 1027(11th Cir. 2004) (en banc), cert. denied, 125 S.Ct. 2245 (2005); see also INA §242(b)(4)(B), 8 U.S.C. § 1252(b)(4)(B) ("[T]he administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary...."). In sum, we must affirm the decision before us if it is supported by "reasonable, substantial, and probative evidence on the record considered as a whole." Al Najjar, 257 F.3d at 1283-84.

An alien is entitled to withholding of removal under the INA if he can show that his life or freedom would be threatened on account of race, religion, nationality,

membership in a particular social group, or political opinion. Mendoza U.S. Att'y General, 327 F.3d 12S3, 1287(11th Cir. 2003); see also INA § 241(b)(3), 8 U.S.C. § 1231(b)(3). The alien bears the burden of demonstrating that it is "more likely than not" that he will be persecuted or tortured upon his return to the country

in question. Fahim, 278 F.3d at 1218. This is a more stringent burden of proof than the burden of proof for asylum. Sepulveda v. U.S. Att'y General, 401 F.3d 1226, 1232 (11th Cir. 2005). If the alien establishes past persecution based on a protected ground, there is a rebuttable presumption that his life or freedom would be threatened upon return to his country. See Mendoza, 327 F.3d at 1287; see also 8 C.F.R. §208.16(b)(l)(i). An alien who has not shown past persecution, however, may still be entitled to withholding of removal if he can demonstrate a future threat to his life or freedom on a protected ground. See 8 C.F.R. § 208. 16(b)(2). An alien cannot demonstrate that his life or freedom would be threatened if the IJ finds that the alien could avoid a future threat to his life or freedom by relocating to another part of the proposed county of removal and, under all the circumstances, it would be reasonable to expect the applicant to do so. Id. § 208.16(b)(2).

Although the INA does not expressly define "persecution" for purposes of qualifying as a "refugee," see INA § l0l(a)(42), 8 U.S.C. § 110l(a)(42), we have observed that "persecution is an extreme concept, requiring more than a few isolated incidents of verbal harassment or intimidation," Sepulveda, 401 F.3d at 1231 (quotations omitted). Menacing telephone calls and threats, for example, do not rise to the level of persecution. See id.

To obtain relief under CAT, the burden is on the applicant

to establish that it is "more likely than not" he will be tortured in the country of removal. 8 C.F.R. § 208. 16(c)(2). Torture is defined as:

> any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Id.§ 208.1 8(a)(l). Because the burden regarding CAT relief is higher than the asylum standard, a petitioner who fails to establish eligibility for asylum is usually unable to carry the burden regarding CAT relief. See Al Najjar, 257 F3d at 1303-04.

Garcia-Gonzalez contends that the IJ erred in denying withholding of removal and CAT relief because there is a clear probability that, if returned to Venezuela, he will be persecuted by supporters of President Hugo Chavez, as demonstrated by the continued attacks against his father in Venezuela. Garcia-Gonzalez insists that Chavez supporters are everywhere in Venezuela and he could not safely relocate to another part of the country. He submits that the IJ also erred in denying CAT relief because the Venezuelan government has "turned a blind eye" to the violent activities of its supporters and the Venezuelan national guard.

We are not persuaded. In our view, the challenged decision is supported by substantial evidence. This means that the record does not compel reversal of the IJ's determination that Garcia-Gonzalez failed to establish past persecution.

Garcia-Gonzalez testified that in February 1992, during Hugo Chavez's attempted coup, he was stopped on the way to work at the airport by a group of six or seven men. They asked him about his work, his membership in the Democratic Action party, and political comments his parents had made. They threw his wallet on the ground, and when he went to pick it up, he was hit on the elbow and hand with a stick. When he asked the men why they had attacked him, they made fun of

his political affiliation and his job, which he had gotten through his parents' political connections. He said he received threatening phone calls for the next few weeks, and again after a second failed coup in November 1992. The phone calls and threats do not rise to the level of persecution. Sepulveda, 401 F.3d at 1231.

The claim of past persecution rests heavily on the February 1992 attack described above. It is unclear from his testimony that these men attacked him due to his or his family's political opinion as opposed to his job. Even if this attack was based on his political opinion, it appears to have been an isolated incident considering that he remained in Venezuela until 1996 and suffered no further attacks.

The record does not establish a future threat to Garcia-Gonzalez's life or freedom on a protected ground. In advancing his future threat claim, Garcia-Gonzalez relies — in addition to the February 1992 incident — on the fact that

his father was detained and beaten in 2002 and has been attacked and threatened multiple times since then. This is the only evidence of threats he cites over the ten plus years since 1992. Garcia-Gonzalez fears that he will be attacked due to his father's political activities.2 His father, however, still lives in Venezuela, despite the fact that he has a valid passport and visa to the United States.

The record in this case does not compel reversal of the IJ's finding that Garcia-Gonzalez failed to demonstrate it was more likely than not that he would be persecuted if returned to Venezuela or that he could not avoid a future threat by relocating to another part of Venezuela. We therefore affirm the IJ's denial of withholding of removal.

The record also does not compel reversal of the IJ's denial of CAT

relief. There is simply no evidence that, on his return to Venezuela, Garcia-Gonzalez would likely be subjected to violence "at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." 8 C.F.R. § 208.1 8(a)(l). Thus, we affirm the denial of CAT relief as well.

PETITION DENIED.

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2 His mother is deceased.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5201 Leesburg Pike, Suite 1300
Falls Church, Virginia 22041

Nishan C. Mahendran
Counsel/MIA
P.O. Box 820608
Suite 200
Pembroke Pines, FL 33082-0000

Office of the Chief
333 South Miami Ave.,
Miami, FL 33130

Name: GARCIA-GONZALEZ, ALEJANDRO EMILIO
A96-282-224
Riders: 96-282-225 96-282-226

Date of this notice: 08/03/2006

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely

"S/_____"
Frank Krider
Chief Clerk

Enclosure
Panel Members:
PAULEY, ROGER

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A96-282-224 - Miami Date: AUG 03 2005

In re: GARCIA-GONZALEZ, ALEJANDRO EMILIO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Nishan C. Mahendran

ORDER:

PER CURIAM. We adopt and affirm the decision of the Immigration Judge. See Matter of Burbano, 20 I&N Dec. 872, 874 (INA 1994) (noting that adoption or affirmance of a decision of an Immigration Judge, in whole or in part, is 'simply a statement that the Board's conclusions upon review of the record coincide with those the immigration Judge articulated in his or her decision'). We agree with the Immigration Judge that the applicant is ineligible for asylum because he failed to timely file his asylum application or establish either the existence of changed circumstances or extraordinary circumstances which would excuse his untimely filing (IJ at 2-3, 9). See sections 208(a)(2)(B) and (D) of the Immigration and Nationality Act. The Immigration Judge also correctly concluded that the applicant failed to meet his burden of proof for withholding

of removal and for protection under the Convention Against Torture. Accordingly, the appeal is dismissed.

FURTHER ORDER: Pursuant to the Immigration Judge's order and conditioned upon compliance with conditions set forth by the Immigration Judge and the statute, the alien is permitted to voluntarily depart from the United States, without expense to the Government, within 60 days from the date of this order or any extension beyond that time as may be granted by the Department of Homeland Security (DHS). See section 240B(b) of the Immigration and Nationality Act; 8 C.F.R. §§ 1240.26(c), (1). In the event the alien fails to so depart, the alien shall be removed as provided in the Immigration Judges order.

NOTICE: If the alien fails to depart the United States within the time period specified, or any extensions granted by the DHS, the alien shall be subject to a civil penalty of not less than $1,000 and not more than $5,000, and shall be ineligible for a period of 10 years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Immigration and Nationality Act. See section 240B(d) of the Act.

"S/_____)
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
Miami, Florida

File A96 282 224
A96 282 225
A96 282 226

In the Matter of
ALEJANDRO EMILTO GARCIA-GONZALEZ)
YOSETTI MARIANA RODRIGUEZ-)
ARICHIKA, AND MARIA ALEJANDRE)
GARCIA-RODRIGUEZ,)
Respondent)

IN REMOVAL PROCEEDINGS Monday, June 14, 2004

CHARGE: Section 237(a)(1)(B) of the Immigration and Nationality Act, respondents are each non- immigrant visitors who have remained in the United States longer than permitted.

APPLICATIONS: Withholding of removal; protection under the Convention Against Torture; in the alternative voluntary departure.

ON BEHALF OF RESPONDENT: ON BEHALF OF DHS:

Georgia Gillette, Esquire James Jones, Esquire
Law Offices of Nisean C. Mahidren Immigration and
Customs Enforcement

2701 W Oakland Park Blvd Ste 415
Ft. Lauderdale, Florida 33311

333 South Miami Ave,
2nd Fl, Miami,
Florida 33130

ORAL DECISION OF THE IMMIGRATION JUDGE

MAR 22 2005

The respondents are husband, wife, and daughter, all of whom are natives and citizens of Venezuela. Each were issued Notices to Appear on or about March 20, 2003. See Court's Exhibits 1—A, 1-B, and 1-C. At a master calendar hearing conducted on January 6, 2004, respondents appeared before the Court, with counsel, and admitted all four allegations in their respective charging documents, as well as conceding the ground of removal as to each. Removal was established by clear and convincing evidence, as required by Section 240(c)(1)(A) of the Act. See Also generally, Woodby v INS, 385 U.S. 276 (1966).

The issue before this Court today concerns their applications for relief from removal.1

1. The respondents affirmative application for relief. Form I— 589, was prepared in the fall of 2002 and submitted to the Department of Homeland Security on November 22, 2002. That application required filing within one year from entry of the respondent, or one year from the anniversary of the application for regulation in the spring of 1998, whichever came later. The respondent's application therefore was submitted at least four years out of time and respondent would have to establish an extraordinary circumstance or changed country condition to warrant its consideration. The respondent has indicated the theory on which this application can go forward, that he has suffered from post traumatic stress disorder since his last entry in 1996, up until about the time of receiving psychological consultation from a Dr. Anthony Fallon. Respondent also indicates that there may have been an issue regarding ineffective assistance of counsel within weeks of his entry into the United States in 1996, and then lastly changed country conditions while in the

FACTUAL FINDINGS OF THE COURT

The respondent has submitted documentary evidence that begins with the Exhibit 6 writings of Dr. Anthony Fallon regarding his assessment that the respondent has suffered post traumatic stress disorder. Further, the respondent has submitted at Exhibit 4, a spring 2004 filing, showing the credentials of his father as a journalist and professor at the university, extensive copy of the respondent's pilot log, also including the numerous scores that he received and various training, such as navigation, regulations, mechanics of the aircraft, letters from the Democratic Action Committee, as well as Various joint Sworn statements regarding particularly his parent's affiliation with the Democratic movement in Venezuela. The respondent has also submitted the most recent country report, marked as evidence at Exhibit 7 and the Government had provided the previous year's report from the Department of State in evidence as Court's Exhibit 4.

Respondent testified his last entry to the United States was April 15, 1996. He studied for awhile to obtain his commercial pilot's license but did not receive a degree or certificate. He indicated around age 21 he began working at the State-run airline in Venezuela. That employment lasted one year, from approximately December of 1991 to December of 1992.

Thereafter, he worked in a hotel for promotions and was also attending school. He had lived with his parents in Caracas, Venezuela.

United States. The Court would note that Dr. Fallon's affidavit, at Exhibit 6, is conclusory in nature, indicating the respondent has psychic numbing and emotional amnesia out of fear of being deported from the

He's noted that his mother is deceased. Apparently her passing occurred while here in the United States. His father has visited him often from Venezuela in the United States, but continues to reside permanently in Venezuela and respondent maintains is still a key opponent of the Hugo Chavez government. The respondent has submitted as part of his April 2004 filing letters that reflect damage to his parent's home as recently as December of 2003. The letter reflects that windows have been broken, writing on walls and doors of the residence with slogans were attached.

Respondent described the first incident affecting him around the time of the coup de tat of February 4, 1992. He was traveling with a friend, apparently on a road to the airport where he had employment. He and his friend were stopped by individuals who ordered them out of the vehicle and asked for identification. The respondent was eventually ordered back out of the car, although his friend, who had been returned to the automobile, was allowed to remain inside the vehicle.

United States to Venezuela from incidents that dated back to the beginning of 1992. The Court does not find that based on the respondent's testimony, that he sought consultation within weeks of entering the United States by not one but two attorneys reflect that the post traumatic stress disorder, even assuming it's to the grave consequences that Dr. Fallon writes, did not preclude the respondent from still seeking advice on this potential relief. Under the Lazada standard, there is no information to warrant that there had been ineffective assistance of those consultations. Further, from both Dr. Fallon's writing and the respondent's testimony later in this hearing, the incidents began in February of 1992 and then again in the fall of that same year. There were numerous trips between the United States and back to Venezuela and it does not appear that the conditions have really changed in this country since those first encounters at the coup attempt of February of 1992, but rather those conditions have only exasperated.

These persons asked the respondent questions, principally about his work at the airlines, and then in addition, from an ID they found in his wallet, any work or association that he had with the Democratic Action Party. He identified one of the individuals as a national guardsman, whom he had recognized from the airport, who had duties there. It wasn't clear entirely whether this individual recognized the respondent or not, but he believed from the eye contact that they both recognized each other. He indicated that the wallet was thrown to the ground and when respondent reached to pick it up, he was hit with sticks, which included a fracture to his right thumb and then a verbal and physical assault that lasted for the next 30 minutes.

Respondent indicated that the individuals had no interest in his traveling companion. Eventually these persons left. Respondent and his friend then drove to a house close to the airport where they had a mutual friend and, learning of the coup that day, they remained at the friend's house until that evening when he returned home. The next day, he indicated, his mother took him to a hospital for treatment for the fractured thumb, and shortly thereafter, they began receiving calls at the house that were of persons harassing them because of their party affiliation.

On November 27, 1992, he noted that there had been another coup attempt. More threats came thereafter and he began seeing a local psychologist, regarding the traumas that he had suffered. The I-589 reflects that the respondent had travelled to the United States on December 22, 1992, shortly after the last of the two incidents that occurred that year. He said the initial plan was to stay for only a week and then go back to Venezuela, and apparently that's what he and his family did. The application also reflects further trips in the months of December in the years 1993, as well as 1994. It's

not clear to the Court if the respondent was suffering the post traumatic stress disorder that he claims, why there would have been numerous trips to the United States and then still returns to Venezuela, when there were the continuing problems of the balivarian movement.

In any event, the respondent noted that Chavez was eventually released from incarceration and in 1998 he was elected president of that country, and then re-elected for a term as recently as 2002. He believes, not withstanding the eight years since his final entry to the United States, that if he returns to Venezuela these same individuals, or persons of similar ilk, would wish to harm him as well.

He was asked questions on cross examination regarding the symptoms that be has suffered from the PTSD. He said he's had trouble sleeping since 1992, has indicated that he has tried to disassociate himself from any news in Venezuela, while he's maintained an interest in other world affairs, and he's been irritable often, and some anxiety from the separation that he has caused for his wife from her family in Venezuela, feeling that would not have been safe to return there for any visits since the last entry of the family in 1996 or 1997 respectively.

He notes he last saw his father in December of 2003 when his father made a brief visit to the United States. His father though, of course, has returned to Venezuela and he was asked questions regarding his father's ability to return back and forth between visits to the United States and Venezuela. He's indicated at times it's been an arduous process and uncertainty as to when his father would be allowed to come or go, but nevertheless his father is able to make those arrangements.

He was further asked questions regarding his flight training, all of which occurred after the fall of 1993 and up until about the beginning of the summer of 1994, events that again had occurred after the two traumatic events that he described in 1992. The court would also note that he has submitted, as part of his April 2004 submission, a grades reflecting his evaluation on instrument panel reading, aerodynamics, weights and balance of airlines, mechanics, regulations, and the scores ranged from the high 90's to the perfect score of 100. It appears that the respondent had been able to give his full attention to his pilot training program during after both of those events.

He was also asked whether he had actively demonstrated in any local United States activities against the Chavez regime in the last three years. He said he had not and that primarily that was the result of the PTSD.

Respondent was also asked questions on cross examination about the viability of any internal relocation within Venezuela, outside of Caracas. He's indicated that, while there are other cities that where he and his wife have some family, he believes, the country is under such tight control today that that would not be an option for him. Finally, he was asked if his father is a journalist or through his work at the university had any publications or other evidence to show of any raised concerns his father has made in Venezuela, either for the son or the father himself, or outside of that to any other human rights groups to which the respondent may have made on his father's behalf here in the United States. The respondent did not have any such evidence.

On redirect examination the respondent provided as part of Exhibit 9, recent articles published here in the United

States. These articles reflect that there has been a recall referendum on President Chavez set for August 15, 2004. Those articles note that if recalled, the presidential elections would be held, even though Chavez, in theory, could still run for political office.

STATEMENT OF THE LAW

To be eligible for withholding of removal, respondent must show his "life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion."

Section 24l(b)(3)(A) of the Act, that provision requires him to demonstrate "a clear probability" of persecution on account of one of the five grounds in the Act. INS V. Stevic, 467 U.S. 407 (1984).

To be eligible for protection under Article 3 of the Convention Against Torture, respondent must establish evidence that he would be subject to torture "by or at the instigation of or with the consent or acquiescence of a public official, or person acting in an official capacity." See 8 C.F.R. 1208. l8(a) (1)

FINDINGS OF THE COURT

First, again the Court will reiterate that it does not find that there have been such changed country conditions, particularly in light of the respondent's initial testimony regarding the most traumatic events that he suffered in February and then in November of 1992, to warrant the consideration of an asylum application filed some eight years after his last entry to the United States. Further, the Court does not find, from either the respondent's testimony or the

evidence produced by Dr. Fallon in the record, that there has been such extraordinary circumstances to warrant its consideration. The Court would note, finally, on this point that the respondent, by his own admission, sought legal representation specifically for filing an asylum application of two different attorneys within weeks of his arrival to the United States, and it's self—serving testimony that they had been dissuasive in not encouraging the respondent to pursue that application would not be sufficient to meet the Lazada standard, and therefore to overcome his burden to show that this application should be considered under the regulations. With regards to the documentary evidence and testimony for his applications for withholding of removal and under protection of the Convention Against Torture, the Court would note that the respondent, even after the failed coups of February 1992 and November1992, and the incidents to which he described, the respondent came to the United States on no less than four trips, three of which he returned, presumably all to Venezuela. After the first incident, the respondent was even able to take flight lessons which, as the Court had previously noted, he scored high marks during the times of his lessons. The respondent was also able apparently to travel outside of Venezuela, even with the growing concerns of the Chavez movement. Each time the respondent would return to his country. This goes to the affect of even his own subjective fear.

Further, the court would note that the father, who is the principal opponent then and still today of the Chavez movement, is able to travel in and out of Venezuela to the United States and then back to the father's native country. This also goes against the respondent's subjective fear, even though he claims it's an arduous process for his father. Ones fear is reduced, when the principal family member remains in the home country. See for example, In re A-E-M-, 21 I&N

Dec. 1157 (BIA 1998).

Further, the Court will note that merely living in a totalitarian country, such as Venezuela, where there are general conditions of upheaval that affect tens of thousands of individuals, is not in and of itself per se persecution. See for example, Matter of Dunar, 14 I&N Dec. 310 (BIA 1973). Even by the respondent's own submissions of his last exhibit, the recall vote which has been challenged by tens of thousands, if not hundreds of thousands of Venezuelans, has brought a recall vote on August 15th of this year. If that recall vote is successful, there would be new presidential elections and then there could be additional change of democracy in his home country.

The Court does not find the incidents that he has testified to in February or November of 1992 rise to a level of past persecution within the meaning of Matter of Chen, 20 I&N Dec. 16 (RU 1989). The facts in Chen are in opposite of these. Chen was an individual who was persecuted by his government for religious and political reasons and forced into solitary confinement at age eight for six months, fed only bread and water, and then after release from solitary confinement sent to re-education camps where young Chen spent all of his adolescent, teenage, and early adult life. Chen was only then released from incarceration by government control when he wrote a denunciation of his father's death, after the father had been thrown into a pit of burning Bibles.

The Court finds that the respondent has failed to establish a clear probability that he would be harmed or threatened with harm on account of one of the five grounds enumerated in Section 241(b)(3)(A) of the statute. The evidence in this case, both testimonial and documentary, does not demonstrate the "it is more likely than not" he would subject

to persecution if returned to Venezuela.

Finally, the Court would note that while the respondent's father has remained in Venezuela, and presumably been able to continue with his activities and the Democratic Action movement, perhaps working as a journalist or through the university, that it fails to establish that the present government would want to torture this respondent now or in the future for any reason whatsoever. See generally, In re S-V-, 22 I&N Dec. 1306 (BIA 2000).

Finally, with regards to the alternative applications for voluntary departure, the court is satisfied that the respondents have established that they are ready, willing, and able to depart the United States at their own expense and can afford a minimal payment bond of $500 by each, the Court will grant them voluntary departure, as the statute will allow a maximum of two months from the date of this decision, or on or before August 14, 2004, and will impose a minimal bond that the statute requires of $500, payable to the Department of Homeland Security, by five business days from today, on or before June 21, 2004. Failure to pay the bond as required by statute within the terms provided, or to depart voluntarily within the terms of this Court's order, would result without further notice or action an order of removal from the United States to Venezuela.

Accordingly, the following orders are now hereby entered.

ORDER

ORDERED respondents are each found subject to removal based on the charge in their respective Notices to Appear.

FURTHER ORDERED lead respondent's application for asylum is found untimely.

FURTHER ORDERED lead respondent's applications for withholding of removal and protection under the Convention Against Torture are hereby denied.

FURTHER ORDERED each respondent is granted the privilege of voluntary departure on or before August 14, 2004 and upon payment of a $500 bond by each, on or before close of business of Monday, June 21, 2004. Failure to pay the bond amount within the time required by statute or within the terms of the maximum 60-day voluntary departure period, without further notice or action, would result in an order of removal from the United States to Venezuela.

"S/_____"
J. DANIEL DOWELL
United States Immigration Judge

U.S. Department of Justice
Immigration and Naturalization Service Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act

File No: A96-282 224

In Matter of:
Respondent: GARCIA GONZALEZ, ALEJANDRO EMILIO currently residing at 1442 AVON LN APT 623 NORTH LAUDERDALE. FL 33058-0000 954-726-1122

☐ 1. You are an arriving alien.

☐ 2. You are an alien present in the United States who has not been admitted or paroled.

☒ 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:
1) You are not a citizen or national of the United States;
2) You are a native of VENEZUELA and a citizen of VENEZUELA,
3) You were admitted to the United States at MIAMI, FL (IA) on or about April 15, 1996 as a nonimmigrant VISITOR FOR PLEASURE with authorization to remain in the United States for a temporary period not to exceed October 15, 1996.
4) You remained in the United States beyond October 15, 1996 without authorization from the Immigration and Naturalization Service.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s)

of Law:
Section 237 (a) (I) (B) of the Immigration and Nationality Act (Act), as amended, in that after admission as a nonimmigrant under Section 101(a) (45) of the Act, you have remained in the United States for a time longer than permitted.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.

☐ Section 235(b)(I) order was vacated pursuant to: ☐8CFR 208.30(f)(2) ☐8 CFR 235.3(h)(5)(iv)

YOU ARE ORDERED to appear before an Immigration judge of the United States Department of Justice at: 155 SOUTH MIAMI AVE ROOM 800, MIAMI FL 33130-0000 on AUGUST 22, 2003 at 9:00A.M. to show why you should not be removed from the United States based on the charge(s) set forth above.

"S/_____"
(Signature and Title of Issuing Officer)

Date: 3/26/03 MIAMI, FL
(City and State)

See reverse for important information

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose you may be represented in this proceeding. at no expense to the Government. by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from, the date of this notice, to allow sufficient time to secure counsel. A list at qualified attorneys and organizations who may be available to represent you at no cost will be provided with this Notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents which you desire to have considered in connection with your case, If any document is in a foreign Language, you must bring the original and a certified English translation of the document. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or of the allegations in the Notice to Appear and that you are inadmissible or deportable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to

object, on proper legal grounds to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge You will be advised by the judge before whom you the appear, of any relief from removal for which you may appear eligible including the privilege of departing voluntarily You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: 'You are required to provide the INS, in writing with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Farm EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will, be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the Immigration judge in your absence, and you may be arrested and detained by the INS.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing I waive my right to have a 10-day period prior to appearing before an immigration judge.

_____

(Signature of Respondent)

Before:

_____

Date:_____

(Signature and Title of INS Officer)

Certificate of Service

This Notice to Appear was served on the respondent by me on 04/01/03 in the following manner and in compliance with section 2.39(a)(1)(F) of the Act:

☒ in person. ☐ by certified mail, return receipt requested ☐ by regular mail

☒ Attached is a list of organizations and attorneys which provide free legal services.

☒ The alien was provided oral notice in the Spanish language of the time and place of his or her hearing and of the consequences of failure to appear provided in section 240(b)(7) of the Act.

"S/_____"

(Signature of Respondent if Personally Served)

"S/_____"

(Signature and Title of Officer)

U.S. Department of Justice
Immigration and Naturalization Service Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act

File No: A96 282 225

In Matter of:
Respondent: RODRIGUEZ ARRECHEDERA, YOSEDY MARIANA currently residing at 1442 AVON LN APT 623 NORTH LAUDERDALE. FL 33058-0000 954-726-1122

☐ 1. You are an arriving alien.

☐ 2. You are an alien present in the United States who has not been admitted or paroled.

☒ 3. You have been admitted to the United States, but are deportable for the reasons stated below.

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2) You are a native of VENEZUELA and a citizen of VENEZUELA,
3) You were admitted to the United States at MIAMI, FL (IA) on or about April 15, 1996 as a nonimmigrant VISITOR FOR PLEASURE with authorization to remain in the United States for a temporary period not to exceed October 15, 1996.
4) You remained in the United States beyond October 15, 1996 without authorization from the Immigration and Naturalization Service.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of Law:
Section 237 (a) (I) (B) of the Immigration and Nationality Act (Act), as amended, in that after admission as a nonimmigrant under Section 101(a) (45) of the Act, you have remained in the United States for a time longer than permitted.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.

☐ Section 235(b)(I) order was vacated pursuant to: ☐8CFR 208.30(f)(2) ☐8 CFR 235.3(h)(5)(iv)

YOU ARE ORDERED to appear before an Immigration judge of the United States Department of Justice at: 155 SOUTH MIAMI AVE ROOM 800, MIAMI FL 33130-0000 on AUGUST 22, 2003 at 9:00A.M. to show why you should not be removed from the United States based on the charge(s) set forth above.

"S/_____"
(Signature and Title of Issuing Officer)

Date: 3/26/03 MIAMI, FL
(City and State)

See reverse for important information

Notice to Respondent

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Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose you may be represented in this proceeding. at no expense to the Government. by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from, the date of this notice, to allow sufficient time to secure counsel. A list at qualified attorneys and organizations who may be available to represent you at no cost will be provided with this Notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents which you desire to have considered in connection with your case, If any document is in a foreign Language, you must bring the original and a certified English translation of the document. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or of the allegations in the Notice to Appear and that you are inadmissible or deportable on the charges contained in the Notice to Appear. You will have en opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to

object, on proper legal grounds to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge You will be advised by the judge before whom you the appear, of any relief from removal for which you may appear eligible including the privilege of departing voluntarily You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: 'You are required to provide the INS, in writing with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Farm EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will, be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the Immigration judge in your absence, and you may be arrested and detained by the INS.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing I waive my right to have a 10-day period prior to appearing before an immigration judge.

(Signature of Respondent)

Before:

_____

Date:_____

(Signature and Title of INS Officer)

Certificate of Service

This Notice to Appear was served on the respondent by me on 04/01/03 in the following manner and in compliance with section 2.39(a)(1)(F) of the Act:

☒ in person. ☐ by certified mail, return receipt requested ☐ by regular mail

☒ Attached is a list of organizations and attorneys which provide free legal services.

☒ The alien was provided oral notice in the Spanish language of the time and place of his or her hearing and of the consequences of failure to appear provided in section 240(b)(7) of the Act.

"S/_____"

(Signature of Respondent if Personally Served)

"S/_____"

(Signature and Title of Officer)

U.S. Department of Justice
Immigration and Naturalization Service Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act

File No: A96 282 226

In Matter of:
Respondent: GARCIA RODRIGUEZ, MARIA ALEJANDRA currently residing at 1442 AVON LN APT 623 NORTH LAUDERDALE, FL 33058-0000 954-726-1122

☐ 1. You are an arriving alien.

☐ 2. You are an alien present in the United States who has not been admitted or paroled.

☒ 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:
1) You are not a citizen or national of the United States;
2) You are a native of VENEZUELA and a citizen of VENEZUELA,
3) You were admitted to the United States at MIAMI, FL (IA) on or about April 15, 1996 as a nonimmigrant VISITOR FOR PLEASURE with authorization to remain in the United States for a temporary period not to exceed October 15, 1996.
4) You remained in the United States beyond October 15, 1996 without authorization from the Immigration and Naturalization Service.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of Law:
Section 237 (a) (I) (B) of the Immigration and Nationality Act (Act), as amended, in that after admission as a nonimmigrant under Section 101(a) (45) of the Act, you have remained in the United States for a time longer than permitted.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.

☐ Section 235(b)(I) order was vacated pursuant to: ☐8CFR 208.30(f)(2) ☐8 CFR 235.3(h)(5)(iv)

YOU ARE ORDERED to appear before an Immigration judge of the United States Department of Justice at: 155 SOUTH MIAMI AVE ROOM 800, MIAMI FL 33130-0000 on AUGUST 22, 2003 at 9:00A.M. to show why you should not be removed from the United States based on the charge(s) set forth above.

"S/_____"
(Signature and Title of Issuing Officer)

Date: 3/26/03 MIAMI, FL
(City and State)

See reverse for important information

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose you may be represented in this proceeding. at no expense to the Government. by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from, the date of this notice, to allow sufficient time to secure counsel. A list at qualified attorneys and organizations who may be available to represent you at no cost will be provided with this Notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents which you desire to have considered in connection with your case, If any document is in a foreign Language, you must bring the original and a certified English translation of the document. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or of the allegations in the Notice to Appear and that you are inadmissible or deportable on the charges contained in the Notice to Appear. You will have en opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to

object, on proper legal grounds to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge You will be advised by the judge before whom you the appear, of any relief from removal for which you may appear eligible including the privilege of departing voluntarily You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: 'You are required to provide the INS, in writing with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Farm EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will, be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the Immigration judge in your absence, and you may be arrested and detained by the INS.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing I waive my right to have a 10-day period prior to appearing before an immigration judge.

_____

(Signature of Respondent)

Before:

_____

Date:_____

(Signature and Title of INS Officer)

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